

UNITED STATES DISTRICT COURT  
DISTRICT OF MAINE

CITY OF BANGOR,	)	
	)	
Plaintiff,	)	
v.	)	Civil No. 02-183-B-S
	)	
CITIZENS COMMUNICATIONS	)	
COMPANY,	)	
	)	
Defendant/Third-party	)	
Plaintiff,	)	
v.	)	
	)	
GUILFORD TRANSPORTATION	)	
INDUSTRIES, INC., <u>et al.</u>	)	
	)	
Third-party Defendants	)	

**ORDER ON MOTION TO STRIKE THIRD-PARTY COMPLAINT AND  
RECOMMENDED DECISION ON MOTION TO DISMISS AND/OR MOTION FOR  
SUMMARY JUDGMENT FILED BY THIRD-PARTY DEFENDANT,  
GUILFORD TRANSPORTATION, INC.**

This civil action was commenced by the City of Bangor against Citizens Communications Company to recover response costs and other relief related to the City's environmental remediation effort at and in the vicinity of a city-owned parcel on which Citizens formerly operated a manufactured gas plant. In response to the City's claims, Citizens filed numerous third-party complaints against certain predecessor operators of the gas plant and their successors in interest, seeking contribution toward any liability that might arise as a consequence of Bangor's suit. Citizens also filed a third-party complaint against Guilford Transportation Industries (GTI), based on GTI's ties to a subsidiary that operated a rail yard in the vicinity of the manufactured gas plant for an extended number of years. According to Citizens, substantial quantities of coal and tar were stored at the rail yard and discharges from these stores

exacerbated pollution levels in the vicinity of the manufactured gas plant. GTI now moves for an early exit from this suit with a motion to strike the third-party complaint and a motion to dismiss “and/or” for summary judgment based on lack of personal jurisdiction. (Third Party Def. Guilford Transp. Indus., Inc.’s Mot. to Strike Third-Party Comp., Mot. to Dismiss and/or Mot. for Summ. J., Docket No. 47.) The motion to strike is **DENIED**. I **RECOMMEND** that the Court **DENY** the motion to dismiss/motion for summary judgment as well.

### **Motion to Strike**

GTI moves to strike the Third-Party Complaint on the ground that service did not comply with Rule 14(a), which provides that a defendant must move for leave of court before serving a third-party complaint unless the third-party complaint is filed within 10 days of the date the defendant’s answer is served. In this case, Citizens filed its third-party complaint against GTI on April 30, 2003, some 18 weeks after it filed its original answer and certificate of service. (See Docket Entries 2 & 19.) Although the third-party complaint was served beyond Rule 14(a)’s 10-day period, the third-party action against GTI was commenced within the joinder deadline set by the scheduling order. That deadline was twice extended by motion to account for the fact that Citizens’s current counsel entered an appearance on March 28, 2003, and needed to review a substantial quantity of documents subpoenaed from numerous potential third-party defendants (Docket No. 12) and the fact that the City of Bangor was planning to file an amended complaint (Docket Nos. 13 & 14). The concern over the anticipated joinder of multiple third-party defendants was first addressed by the Court, the City and Citizens during a January 29, 2003, scheduling conference that occurred within the 10-day time frame indicated in Rule 14(a). That conference gave rise to the Court’s original, January 29, 2003, Scheduling Order. (Docket No. 5.) That Scheduling Order implicitly granted Citizens leave to commence third-party actions

within the Scheduling Order's deadline for joinder of parties. GTI's highly-technical argument that Citizens was required to file a formal written motion is contrary to this District's pre-trial practice. What is important is not the formal method by which a party moves for "leave of court," but that the court actually authorizes the filing and service of the third-party complaint. The Court's Scheduling Order did just that. Moreover, GTI does not even hint at the existence of any undue delay or prejudice. Lehman v. Revolution Portfolio LLC, 166 F.3d 389, 393 (1st Cir. 1999) (holding that the decision to permit a third-party action is a matter for the court's discretion and is appropriate "on any colorable claim of derivative liability that will not unduly delay or otherwise prejudice the ongoing proceedings"). The motion is **DENIED**.

#### **Motion to Dismiss "and/or" Motion for Summary Judgment**

GTI's pending motion also presents a motion to dismiss and/or motion for summary judgment based on the Court's alleged lack of personal jurisdiction over GTI. Because there is some ambiguity as to whether the summary judgment portion of GTI's motion was intended to address the issue of substantive CERCLA liability in addition to the personal jurisdiction matter, a brief oral argument was had. During that argument, counsel for GTI indicated (1) that the summary judgment portion of the motion is meant to address only the issue of personal jurisdiction, (2) that the discussion of the substantive merits of Citizens's third-party action under the summary judgment heading was intended only to inform the specific jurisdiction "relatedness" inquiry, and (3) that the summary judgment label was used simply as a vehicle to introduce matters outside the pleadings. Citizens responded to this motion by similarly submitting evidence through a Local Rule 56 summary judgment statement of material facts. Because GTI has moved to dismiss pursuant to Rule 12(b)(2) and Citizens has relied upon the prima facie showing of jurisdiction, it is appropriate to consider matters outside the complaint

properly presented by affidavit or otherwise. Boit v. Gar-Tec Prods., Inc., 967 F.2d 671, 675 (1st Cir. 1992).

## I.

Congress has endowed the United States District Courts with subject matter jurisdiction over all controversies arising under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9613(b), without regard to the citizenship of the parties. Because the third-party action presents a federal question, it would not offend Fifth Amendment notions of due process for this Court to exercise personal jurisdiction over GTI. Lorelei Corp. v. County of Guadalupe, 940 F.2d 717, 719 (1st Cir. 1991). But because Congress has not provided for nationwide service of process in CERCLA actions except when they are commenced by the United States, 42 U.S.C. § 9613(e), the District Court cannot properly exercise personal jurisdiction over GTI, a Delaware corporation and New Hampshire domiciliary, unless Citizens's service of GTI satisfied Rule 4 of the Federal Rules of Civil Procedure. Lorelei Corp. v. County of Guadalupe, 940 F.2d at 719-20. Rule 4 directs the Court to determine whether a state court of general jurisdiction would exercise personal jurisdiction over GTI and whether such an exercise of jurisdiction would comport with Fourteenth Amendment notions of due process. Id.; Rule 4(e), (k). These two inquiries are the same in Maine because the Maine Long-Arm Statute "shall be applied so as to assert jurisdiction over nonresident defendants to the fullest extent permitted by the [D]ue [P]rocess [C]lause of the United States Constitution, 14th [A]mendment." 14 M.R.S.A. § 704-A(1); see also Richards v. Tsunami Softgoods, Inc., 239 F. Supp. 2d 80, 82 (D. Me. 2003).<sup>1</sup> The following two standards

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<sup>1</sup> Pursuant to Rule 4(k)(1)(B), service of a summons is effective "to establish jurisdiction over the person of a defendant . . . who is a party joined under Rule 14 . . . and is served at a place within a judicial district of the United States and not more than 100 miles from the place from which the summons issues." Citizens has not raised Rule 4(k)(1)(B), so presumably it is not applicable to this circumstance (GTI's corporate domicile in Portsmouth, New

determine that statutory-qua- constitutional question. “First, the defendant must have purposefully established ‘minimum contacts’ with the forum such that he can reasonably anticipate being haled into that forum’s court. . . . Second, if such contacts exist, the exercise of personal jurisdiction over the defendant must comport with ‘fair play and substantial justice.’” U.S.S. Yachts, Inc. v. Ocean Yachts, Inc., 894 F.2d 9, 11 (1st Cir. 1990) (citations omitted).<sup>2</sup>

Citizens argues that the Court may exercise jurisdiction over GTI because GTI has controlled the operations of Maine Central Railroad Company (MEC) ever since GTI purchased all of MEC’s stock in 1981 and, hence, MEC’s forum contacts serve as GTI’s forum contacts as well. This is an “alter ego” approach to establishing personal jurisdiction. Although it would seem wholly rational to think that personal jurisdiction could be exercised over GTI simply because it is the sole owner of all of MEC’s Maine-issued securities (MEC is a Maine corporation and its stock certificates are documents of title that, among other things, convey a proportional ownership interest in MEC’s assets), that easy solution appears to have been foreclosed by the gloss courts have routinely placed on the Supreme Court’s opinion in Shaffer v. Heitner, 433 U.S. 186 (1977) (holding that an individual who purchases a corporation’s stock

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Hampshire, is within 100 miles of the Edward T. Gignoux Courthouse in Portland, but not the Margaret Chase Smith Courthouse in Bangor) or else would not influence the outcome of the personal jurisdiction issue.

<sup>2</sup> In a prior Recommended Decision on Third-Party Defendant Northwest Growth Corporation’s motion to dismiss based on a lack of personal jurisdiction, I treated the question of whether the forum contacts of a former operator of the subject manufactured gas plant could be attributed to Northwest Growth Corporation as turning entirely on the application of Maine common law, without going on to consider the Fourteenth Amendment issue separately. In the context of that motion, Citizens argued that Northwest Growth Corporation, a South Dakota corporation, was subject to this Court’s jurisdiction based exclusively on its 1995 purchase of assets from Synergy Group, Inc., which had purchased those assets nine years earlier from a former owner and operator of the subject manufactured gas plant. Citizens’s showing in regard to Northwest Growth Corporation would not meet the minimum contacts requirement of due process because the mere purchase of a corporation’s assets, without more, would not constitute “some act by which [Northwest Growth Corporation] purposely avail[ed] itself of the privilege of conducting activities within [Maine], thus invoking the benefits and protection of its laws.” Hanson v. Denckla, 357 U.S. 235, 253 (1958). Compare Waste Management of Wisconsin, Inc. v. Uniroyal, Inc., 1992 U.S. Dist. LEXIS 12003, \*13-16 (W.D. Wis. June 2, 1992) (finding that successor trust that acquired corporation’s assets by transfer and which was involved within the forum state with winding up predecessor’s affairs was subject to the court’s personal jurisdiction).

on the open market is not subject to the jurisdiction of the incorporating state based on that contact alone). See, e.g., Central States, Southeast & Southwest Areas Pension Fund v. Reimer Express World Corp., 230 F.3d 934, 943 (7th Cir. 2000) (“[W]e hold that constitutional due process requires that personal jurisdiction cannot be premised on corporate affiliation or stock ownership alone where corporate formalities are substantially observed and the parent does not exercise an unusually high degree of control over the subsidiary.”). Of course, the kind of connection GTI has to the State of Maine by virtue of buying all of the stock of a closely-held Maine railroad company is quite different from the kind of relationship that arises when an individual buys some shares of stock in a publicly traded corporation in an open market transaction. In any event, although total ownership of MEC is relevant to the inquiry, precedent<sup>3</sup> demands a greater showing to establish the Court’s personal jurisdiction over an out-of-state parent based on its relationship with its wholly-owned domestic subsidiary.

The kind of showing that is required before a court will exercise jurisdiction over a parent based on the forum activities of its subsidiary has been variously stated and includes the following, sometimes overlapping scenarios: (1) the parent exercises pervasive or complete

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<sup>3</sup> The question arises in the context of a Rule 4 contest whether state or federal common law should govern. See, e.g., In re Acushnet River & New Bedford Harbor Proceedings, 675 F. Supp. 22, 33 (Mass. 1987) (noting that, because “federal common law draws upon state law for guidance, . . . the choice between state and federal [veil-piercing law] may in many cases present questions of academic interest, but little practical significance”). The First Circuit has held that state common law should govern in the context of successor liability under CERCLA, but has not clearly answered the question in the jurisdictional context. See United States v. Davis, 261 F.3d 1, 53 (1st Cir. 1999) (describing exceptions to the common law rule “that the buyer of a corporation’s assets (as opposed to its stock) does not incur liability for the divesting corporation’s debts” and further observing that the First Circuit Court of Appeals will apply state law of successor liability where CERCLA liability is concerned). But see United States v. Bestfoods, 524 U.S. 51, 63 n.9 (1998) (“There is significant disagreement among courts and commentators over whether, in enforcing CERCLA’s indirect liability, courts should borrow state law, or instead apply a federal common law of veil piercing. . . . Since . . . the question is not presented in this case, . . . we do not address it further.”). In any event, the Maine Law Court has not yet prescribed a standard that would govern a state court’s consideration of the jurisdictional issue.

control over the subsidiary, either in regard to its day-to-day operations or in regard to the specific, claim-related conduct; (2) the subsidiary is the parent's in-state agent, instrumentality or a mere department of the parent; (3) the parent and subsidiary engage in a common undertaking in a manner that substantially disregards the separate nature of the corporate entities or creates serious ambiguity about the same; (4) the parent's representatives maintain a near constant presence in the state in order to deal directly with those entities the subsidiary conducts business with coupled with other factors reflecting a systematic pattern of in-state activity comparable to the conduct of a domestic corporation; or (5) traditional veil-piercing factors, including failure to observe corporate formalities, inadequate capitalization, commingling of funds, overlapping ownership, officers, directors and personnel, and so forth. See, generally, De Castro v. Sanifill, Inc., 198 F.3d 282, 284-85 (1st Cir. 1999); Miller v. Honda Motor Co., 779 F.2d 769, 772 (1st Cir. 1985); Howse v. Zimmer Manufacturing Co., Inc., 757 F.2d 448, 452-53 (1st Cir. 1985); Presbyterian Church of Sudan v. Talisman Energy, Inc., 244 F. Supp. 2d 289, 330-31 (S.D.N.Y. 2003); In re Lupron Mktg. & Sales Practices Litig., 245 F. Supp. 2d 280, 291-92 (D. Mass. 2003); Sorenson v. H&R Block, Inc., Mem. and Order, 2002 U.S. Dist. LEXIS 18689, \*17-19, 2002 WL 31194868, \* 5 (D. Mass. Aug. 27, 2002).<sup>4</sup> See also Donatelli v. Nat'l Hockey League, 893 F.2d 459, 465-66 (1st Cir. 1990) (discussing standards that apply with respect to a corporation and its wholly-owned subsidiary as a backdrop to the jurisdictional issue that arises from the partner-to-partnership relationship); MGM Studios Inc. v. Grokster, Ltd., 243 F. Supp.

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<sup>4</sup> The First Circuit Court of Appeals has, in two of its precedents, suggested a significantly heightened standard for the exercise of personal jurisdiction, based exclusively on veil-piercing factors, over a foreign defendant, including a showing of fraud. United Elec. v. 163 Pleasant St. Corp., 960 F.2d 1080, 1093-94 (1st Cir. 1992); see also Massachusetts Carpenters Cent. Collection Agency v. Belmont Concrete Corp., 139 F.3d 304, 308 (1st Cir. 1998) ("[P]ersonal jurisdiction cannot be exercised over a foreign company through a corporate veil-piercing theory absent a showing of fraud."). This standard appears to apply specifically to foreign defendants, meaning those who are not "subject to the jurisdiction of the courts of general jurisdiction of any state." Fed. R. Civ. P. 4(k)(2). Furthermore, this fraud standard is contrary to Maine's common law of corporate disregard, which does not require a showing of fraud to pierce the corporate veil for liability purposes, Johnson v. Exclusive Props. Unlimited, 1998 ME 244, ¶ 8, 720 A.2d 568, 572.

2d 1073, 1098-99 (C.D. Cal. 2003) (observing that the touchstone is minimum contacts, not simply the traditional and highly formalistic veil-piercing rules of corporate liability, because the latter were developed for purposes other than establishing personal jurisdiction); Langlois v. Deja Vu, 984 F. Supp. 1327, 1336 (W.D. Wash. 1997) (applying Washington State’s “but for” test: “Jurisdiction may still be proper over a parent corporation, based on the contacts of its subsidiary, if ‘but-for’ the existence of the subsidiary, the parent would control and conduct the activities of the subsidiary in the forum state”); Bowers v. Wurzburg, 501 S.E.2d 479, 490 (W. Va. 1998) (listing 11 factors considered by the Supreme Court of Appeals of West Virginia in these circumstances).

Like all questions of personal jurisdiction, the assessment of whether a corporate parent’s connections to its subsidiary are sufficiently involved to be treated as direct connections to the forum is highly fact-specific. Swiss Am. Bank, Ltd., 274 F.3d at 620-21; De Castro v. Sanifill, Inc., 198 F.3d 282, 284 (1st Cir. 1999); Miller, 779 F.2d at 772. It is also unrelated to the question of whether GTI may be subject to substantive CERCLA liability. Reimer Express World Corp., 230 F.3d at 944 (“The fact that a defendant would be liable under a statute if personal jurisdiction over it could be obtained is irrelevant to the question of whether such jurisdiction can be exercised.”); Compagnie Bruxelles Lambert, 94 F.3d at 590-91 (same).

The Court need not provide Citizens with an evidentiary hearing in order to make its showing. Rule 12(d) “explicitly recognizes the court’s authority to choose either (1) to hear and finally decide a motion to dismiss before trial (by a preponderance-of-the-evidence standard) or (2) to defer the determination under a preponderance-of-the-evidence standard until trial (if plaintiff has made a prima facie showing of jurisdiction).” Boit, 967 F.2d at 677. Citizens has not requested an evidentiary hearing and only oral argument was conducted on the motion.



Therefore, application of the prima facie standard is appropriate. “In determining whether a prima facie showing has been made, the district court is not acting as a factfinder. It accepts properly supported proffers of evidence by a plaintiff as true.” Boit, 967 F.2d at 675.

## II.

The prima facie showing is as follows. GTI is a corporation organized under the laws of the State of Delaware in 1981. (Aff. of John R. Nadolny, Docket No. 49, ¶ 3.) GTI’s corporate office and principal place of business is located in Portsmouth, New Hampshire. (Id., ¶ 4.) GTI is a holding company that owns the stock of several companies, including MEC, whose stock GTI purchased in 1981. (Id., ¶¶ 5, 6.) GTI is not registered to do business in Maine and has neither applied for nor obtained a license to do business in Maine. (Id., ¶¶ 9, 10.) Since GTI purchased MEC’s stock in 1981, GTI’s four individual owners, David Fink, David Armstrong Fink, Richard Kelso and Timothy Mellon, have made themselves the only members of MEC’s board of directors. (Citizens Communications Co.’s Statement of Mat. Facts in Supp. of its Resp. to Guilford’s Mot. to Strike, Dismiss and/or for Summ. J., Docket No. 73, ¶ 2 (admitted by GTI in its Reply Statement, Docket No. 96, ¶ 2).) GTI’s Secretary is also MEC’s Secretary. (Id., ¶ 6.) MEC failed to file an annual report with the State of Maine in 1999, which led to a nearly one-year suspension. (Id., ¶ 9.) MEC filed its 2003 annual report late. (Id., ¶¶ 9, 10.) Despite the suspension in 1999, it appears that MEC’s Maine business operations continued without interruption in 1999. GTI has failed to contest Citizens’s assertion that GTI carried on MEC’s transportation services in 1999.

When the City of Bangor was arranging to purchase the rail yard property in the mid-to-late 1990s, the City sent correspondence concerning purchase and sale negotiations to Leonard Lucas in care of GTI at GTI’s Portsmouth address. The City’s correspondence identified Lucas

as the Vice President of MEC. (Citizens Communication Co.’s Resp., Docket No. 72, Ex. 10.) Likewise, Lucas signed his return correspondence on behalf of MEC, identifying himself only as “Vice President.” Correspondence from Lucas’s assistant was signed on behalf of MEC and identified the signer as the “Assistant to the Vice President.” (Id., Ex. 11.) Both the Vice President’s and the Assistant to the Vice President’s correspondence were printed on GTI letterhead. (Id., Exs. 10 & 11.) GTI asserts that Lucas was, at the time, GTI’s Vice President of Real Estate, not MEC’s Vice President. (Supplemental Aff. of John R. Nadolny, Docket No. 104, ¶ 4.) After initially indicating that GTI “has never, either directly or through any agent or representative, conducted or carried out business in Maine,” that “GTI does not conduct and has never conducted the affairs of the Rail Yard,” and that “GTI does not manage or direct operations and has never managed or directed operations specifically related to pollution . . . at the Rail Yard,” GTI subsequently informed the Court, in reaction to the revelation about Mr. Lucas’s involvement in the purchase and sale of the subject rail yard, that “GTI has acted since the late 1980s as a real estate agent for its wholly-owned railroad companies in Maine, including MEC, with respect to transactions regarding real property owned in Maine by those wholly-owned railroad companies.” (Compare Aff. of John R. Nadolny, Docket No. 49, ¶¶ 11, 16 and 17 with Supplemental Aff. of John R. Nadolny, Docket No. 104, ¶ 2.) Among other issues adverted to in the correspondence between Lucas and the City of Bangor is the matter of Bangor’s agreement to purchase the rail yard property “as is” with respect to the presence of any pollutants in the soil.

Finally, Citizens points to Brotherhood of Locomotive Engineers v. Springfield Terminal Railway Company, 210 F.3d 18 (1st Cir. 2000), as evidence that the individual owners of GTI’s stock have previously engaged in activities that warranted the disregard of other corporate

entities they owned and controlled, none of which are party to this lawsuit. Although the veil-piercing that transpired in the Brotherhood case rested on the application of a standard designed specifically with the Railway Labor Act in mind, Bhd. of Locomotive Eng'rs, 210 F.3d at 29-30, it nonetheless serves as evidence that these individuals have in the past used one of their corporate entities as the agent or instrumentality of another, in disregard of their formal independence.

### III.

The foregoing evidence is prima facie proof that GTI's has sufficient minimum contacts with this forum for a state court of general jurisdiction to exercise personal jurisdiction over GTI without offending due process. The evidence Citizens has presented hits upon several key factors that courts have identified as persuasive in this context: (1) identity between the parent's owners and the subsidiary's directors, with additional overlap in the companies' officer pool; (2) disregard of the subsidiary's corporate formalities by failing to file annual reports; (3) possible past illegality with respect to the maintenance of MEC's business operations in 1999; (4) a history on the part of GTI's owners and MEC's directors of disregarding the corporate formalities of other GTI subsidiaries by using one subsidiary in an attempt to thwart federal labor laws applicable to another; (5) an apparent clouding of the separate corporate identities of GTI and MEC in connection with "Vice President" Lucas's involvement in the sale of the Maine rail yard property; and (6) active, repeat participation by the parent in brokering its subsidiary's Maine real estate transactions since the 1980s. Assuming this evidence is true and taking it in the light most favorable to Citizens, it appears that GTI may well have sufficient "continuous and systematic general business contacts" with this forum, Helicopteros Nacionales de Colombia, S.A. v. Hall, 466 U.S. 408, 416 (1984), or sufficient minimum contacts specifically related to the

contaminated Maine rail yard for it to “reasonably anticipate being haled into court” here, World-Wide Volkswagen Corp. v. Woodson, 444 U.S. 286, 297 (1980).<sup>5</sup> Whether or not this is ultimately the case should be revisited at the summary judgment stage, after Citizens is afforded an opportunity to conduct discovery on the matter. Boit, 967 F.2d at 676 (observing that when the district court “applies the prima facie standard and denies [a] motion to dismiss, it is implicitly . . . ordering ‘that hearing and determination [of the motion to dismiss] be deferred’”) (quoting Fed. R. Civ. P. 12(d)). This would afford Citizens a “reasonable opportunity to present all material made pertinent to such a motion by Rule 56,” Fed. R. Civ. P. 12(b), such as depositions, interrogatories and admissions. In my view, an initial exercise of jurisdiction over GTI does not offend traditional notions of fair play and substantial justice, particularly as GTI’s counsel in this case also serves as counsel for MEC and much of the litigation in regard to GTI and MEC will be duplicative. For these several reasons, I recommend that the Court **DENY** the

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<sup>5</sup> During oral argument, GTI was adamant in insisting that specific jurisdiction could not be exercised over GTI because GTI could not be liable under CERCLA as a corporate parent, citing Bestfoods, 524 U.S. 51. In my opinion, this assertion does not advance the issue. Whether there is a sufficient nexus between a defendant and a claim is a matter of “relatedness,” not actual liability. Swiss Am. Bank, 274 F.3d at 621. GTI’s forum contacts specifically related to the disposition of the allegedly polluted rail yard property tend to inform the question of what entity had control over MEC’s environmental compliance duties, which goes to the issue of CERCLA “operator” liability, and GTI’s various general contacts with the forum also tend to inform the veil-piercing analysis and relate to the question of whether GTI might bear indirect liability as a deemed former “owner” of the subject rail yard. Bestfoods, 524 U.S. at 66-68 (distinguishing between indirect liability for a parent under an ownership theory and direct liability for a parent under an operator theory); see also United States v. Kayser-Roth Corp., 97-100 (1st Cir. 2001) (discussing changes in CERCLA liability standards for corporate parents post-Bestfoods).

For its part, Citizens indicated during oral argument that its opposition memorandum was designed to establish the presence of specific jurisdiction, rather than general jurisdiction, but that Citizens believed it should also be entitled to discovery that would probe the existence of general jurisdiction. The distinction between specific and general jurisdiction is an important one because specific jurisdiction is claim specific, whereas general jurisdiction can only be based on continuous and systematic contacts with the forum. United States v. Swiss Am. Bank, Ltd., 274 F.3d 610, 619-21 (1st Cir. 2001). However, in this case, Citizens is primarily arguing that jurisdiction should be exercised over GTI based on MEC’s forum contacts because MEC is GTI’s domestic alter ego. If MEC’s forum contacts can properly be imputed to GTI, then the general versus specific jurisdiction issue may be of little significance because MEC’s forum contacts are more than sufficient to support an exercise of either specific or general jurisdiction. Cf. Donatelli, 893 F.2d at 466 (“[O]nce minimum contacts can be attributed derivatively to the parent, the second-tier threshold is easily attained; all of the relevant secondary criteria (*e.g.*, notice, foreseeability, reciprocity, purposeful availment, and the other Gestalt factors) corroborate the appropriateness of an exercise of jurisdiction.”).

personal jurisdiction motion until such time as the highly fact-specific issue it raises can be determined with the aid of discovery.

### **Conclusion**

For the foregoing reasons, I **DENY** GTI's Motion to Strike Third-Party Complaint and **RECOMMEND** that the Court **DENY** GTI's Motion to Dismiss and/or Motion for Summary Judgment as well. (Docket No. 47.)

### **NOTICE**

A party may file objections to those specified portions of a magistrate judge's report or proposed findings or recommended decisions entered pursuant to 28 U.S.C. § 636(b)(1)(B) for which de novo review by the district court is sought, together with a supporting memorandum, within ten (10) days of being served with a copy thereof. A responsive memorandum shall be filed within ten (10) days after the filing of the objection.

Failure to file a timely objection shall constitute a waiver of the right to de novo review by the district court and to appeal the district court's order.

September 22, 2003

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Margaret J. Kravchuk  
United States Magistrate Judge

**COMPLEX**

**U.S. District Court  
District of Maine (Bangor)  
CIVIL DOCKET FOR CASE #: 1:02-cv-00183-GZS  
Internal Use Only**

BANGOR, CITY OF v. CITIZENS COMMUNICA  
Assigned to: Judge GEORGE Z. SINGAL  
Referred to:

Date Filed: 11/22/02  
Jury Demand: Defendant  
Nature of Suit: 893 Environmental

Demand: \$0  
Lead Docket: None  
Related Cases: None  
Case in other court: None  
Cause: 42:6901 Environmental Cleanup Expenses

Matters  
Jurisdiction: Federal Question

**Plaintiff**

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**Interested Party**

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**Counter Claimant**  
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V.

**ThirdParty Defendant**

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PORTLAND, ME 04101-9546  
791-3000  
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**ThirdParty Plaintiff**

-----

**CITIZENS COMMUNICATIONS  
COMPANY**

V.

**ThirdParty Defendant**

-----  
**UNITED STATES ARMY CORPS  
OF ENGINEERS**

represented by **CHARLES QUINLAN**  
U.S. DEPARTMENT OF JUSTICE  
P.O. BOX 340  
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*LEAD ATTORNEY*  
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**ThirdParty Plaintiff**  
-----

**CITIZENS COMMUNICATIONS  
COMPANY**

V.

**ThirdParty Defendant**  
-----

**GUILFORD TRANSPORTATION  
INDUSTRIES, INC**

represented by **FREDERICK F. COSTLOW**  
RICHARDSON, WHITMAN,  
LARGE & BADGER  
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**FREDERICK J. BADGER, JR.**  
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*ATTORNEY TO BE NOTICED*

**ThirdParty Plaintiff**  
-----

**CITIZENS COMMUNICATIONS  
COMPANY**

V.

**ThirdParty Defendant**  
-----

**HONEYWELL  
INTERNATIONAL INC**

represented by **GREGORY A. BIBLER**  
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(617) 570-1000

**ThirdParty Plaintiff**  
-----

**CITIZENS COMMUNICATIONS  
COMPANY**

V.

**ThirdParty Defendant**  
-----

**S E MACMILLAN COMPANY  
INC**

represented by **NATHANIEL M. ROSENBLATT**  
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**ThirdParty Plaintiff**  
-----

**CITIZENS COMMUNICATIONS  
COMPANY**

V.

**ThirdParty Defendant**  
-----

**DEAD RIVER COMPANY**

represented by **CHARLES A. HARVEY, JR.**  
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**ThirdParty Plaintiff**  
-----

**CITIZENS COMMUNICATIONS  
COMPANY**

V.

**ThirdParty Defendant**  
-----

**NORTHWESTERN GROWTH  
CORPORATION**

represented by **GRAYDON STEVENS**  
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ZIMMERMAN  
53 EXCHANGE STREET  
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*LEAD ATTORNEY*

*ATTORNEY TO BE NOTICED*

**ThirdParty Plaintiff**  
-----

**CITIZENS COMMUNICATIONS  
COMPANY**

V.

**ThirdParty Defendant**  
-----

**UGI UTILITIES INC**

represented by **DOUGLAS A. GRAUEL**  
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MANCHESTER, NH 03101

(603) 647-1800

**ThirdParty Plaintiff**  
-----

**CITIZENS COMMUNICATIONS  
COMPANY**

V.

**ThirdParty Defendant**  
-----

**NORTH AMERICAN UTILITY  
CONSTRUCTION CORP**

**ThirdParty Plaintiff**  
-----

**CITIZENS COMMUNICATIONS  
COMPANY**

V.

**ThirdParty Defendant**  
-----

**BEAZER EAST INC**

represented by **JEFFREY A. THALER**  
BERNSTEIN, SHUR, SAWYER, &  
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*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**ThirdParty Plaintiff**  
-----

**CITIZENS COMMUNICATIONS  
COMPANY**

V.

**ThirdParty Defendant**

-----  
**CENTERPOINT ENERGY  
RESOURCES CORP**

represented by **CHARLES T. WEHLAND**  
JONES, DAY  
77 WEST WACKER DRIVE  
SUITE 3500  
CHICAGO, IL 60601-1692  
312-782-3939  
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**ALBERT D. STURTEVANT**  
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SUITE 3500  
CHICAGO, IL 60601-1692  
312-782-3939

**LAURA M. EARL**  
JONES, DAY  
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CHICAGO, IL 60601-1692  
312-782-3939

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**WILLIAM L. PLOUFFE**  
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P.O. BOX 9781  
PORTLAND, ME 04101  
207-772-1941

**Counter Claimant**  
-----

**CITIZENS COMMUNICATIONS  
COMPANY**

represented by **JULIE ANNA POTTS**  
(See above for address)

V.

**Counter Defendant**  
-----

**BANGOR, CITY OF**

**Counter Claimant**  
-----

**UGI UTILITIES INC**

represented by **DOUGLAS A. GRAUEL**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**JAY VARON**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**E. TUPPER KINDER**  
(See above for address)

V.

**Counter Defendant**

-----

**CITIZENS COMMUNICATIONS  
COMPANY**

represented by **JULIE ANNA POTTS**  
(See above for address)

**Counter Claimant**

-----

**S E MACMILLAN COMPANY  
INC**

V.

**Counter Defendant**

-----

**BANGOR, CITY OF**

**Counter Claimant**

-----

**HONEYWELL  
INTERNATIONAL INC**

V.

**Counter Defendant**

-----

**CITIZENS COMMUNICATIONS  
COMPANY**

V.

**Cross Defendant**

-----

**HONEYWELL  
INTERNATIONAL INC**

**Counter Claimant**

-----

**BARRETT PAVING  
MATERIALS INC**

V.

**Counter Defendant**  
-----

**CITIZENS COMMUNICATIONS  
COMPANY**

**Counter Claimant**  
-----

**BARRETT PAVING  
MATERIALS INC**

V.

**Counter Defendant**  
-----

**BANGOR, CITY OF**

V.

**Cross Claimant**  
-----

**BARRETT PAVING  
MATERIALS INC**

V.

**Cross Defendant**  
-----

**BEAZER EAST INC**

**CENTERPOINT ENERGY  
RESOURCES CORP**

**DEAD RIVER COMPANY**

**GUILFORD TRANSPORTATION  
INDUSTRIES, INC**

represented by **MARY F. KELLOGG**  
(See above for address)

**NORTH AMERICAN UTILITY  
CONSTRUCTION CORP**

**NORTHWESTERN GROWTH  
CORPORATION**

represented by **GRAYDON STEVENS**  
(See above for address)  
*LEAD ATTORNEY*  
*ATTORNEY TO BE NOTICED*

**S E MACMILLAN COMPANY  
INC**

**UGI UTILITIES INC**

**UNITED STATES ARMY CORPS  
OF ENGINEERS**

**Cross Claimant**

-----

**BEAZER EAST INC**

V.

**Cross Defendant**

-----

**BARRETT PAVING  
MATERIALS INC**

**CENTERPOINT ENERGY  
RESOURCES CORP**

**DEAD RIVER COMPANY**

**GUILFORD TRANSPORTATION  
INDUSTRIES, INC**

represented by **MARY F. KELLOGG**  
(See above for address)

**HONEYWELL  
INTERNATIONAL INC**

**MAINE CENTRAL RAILROAD  
COMPANY**

represented by **MARY F. KELLOGG**  
(See above for address)

**NORTH AMERICAN UTILITY  
CONSTRUCTION CORP**

**NORTHWESTERN GROWTH  
CORPORATION**

**S E MACMILLAN COMPANY  
INC**

**UGI UTILITIES INC**

**UNITED STATES ARMY CORPS  
OF ENGINEERS**

**Cross Claimant**

-----

**UGI UTILITIES INC**

V.

**Cross Defendant**

-----

**BARRETT PAVING  
MATERIALS INC**

**BEAZER EAST INC**

**CENTERPOINT ENERGY  
RESOURCES CORP**

**DEAD RIVER COMPANY**

**GUILFORD TRANSPORTATION  
INDUSTRIES, INC**

represented by **MARY F. KELLOGG**  
(See above for address)

**HONEYWELL  
INTERNATIONAL INC**

**MAINE CENTRAL RAILROAD  
COMPANY**

represented by **MARY F. KELLOGG**  
(See above for address)

**NORTH AMERICAN UTILITY  
CONSTRUCTION CORP**

**NORTHWESTERN GROWTH  
CORPORATION**

**S E MACMILLAN COMPANY  
INC**

**UNITED STATES ARMY CORPS  
OF ENGINEERS**

**Cross Claimant**

-----

**DEAD RIVER COMPANY**

V.

**Cross Defendant**

-----

**BARRETT PAVING  
MATERIALS INC**

**BEAZER EAST INC**

**CENTERPOINT ENERGY  
RESOURCES CORP**

**GUILFORD TRANSPORTATION  
INDUSTRIES, INC**

represented by **MARY F. KELLOGG**  
(See above for address)

**MAINE CENTRAL RAILROAD  
COMPANY**

represented by **MARY F. KELLOGG**  
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**NORTH AMERICAN UTILITY  
CONSTRUCTION CORP**

**NORTHWESTERN GROWTH  
CORPORATION**

**S E MACMILLAN COMPANY  
INC**

**UGI UTILITIES INC**

**UNITED STATES ARMY CORPS  
OF ENGINEERS**

**Cross Claimant**

-----

**HONEYWELL  
INTERNATIONAL INC**

V.

**Cross Defendant**

-----

**BARRETT PAVING  
MATERIALS INC**

**BEAZER EAST INC**

**CENTERPOINT ENERGY  
RESOURCES CORP**

**DEAD RIVER COMPANY**

**GUILFORD TRANSPORTATION  
INDUSTRIES, INC**

represented by **MARY F. KELLOGG**  
(See above for address)

**NORTH AMERICAN UTILITY  
CONSTRUCTION CORP**

**NORTHWESTERN GROWTH  
CORPORATION**

**S E MACMILLAN COMPANY  
INC**

**UGI UTILITIES INC**

**UNITED STATES ARMY CORPS  
OF ENGINEERS**

**Counter Claimant**

-----

**HONEYWELL  
INTERNATIONAL INC**

V.

**Counter Defendant**

-----

**BARRETT PAVING  
MATERIALS INC**

V.

**Cross Claimant**

-----

**HONEYWELL  
INTERNATIONAL INC**



V.

**Cross Defendant**

-----

**BARRETT PAVING  
MATERIALS INC**

**BEAZER EAST INC**

**CENTERPOINT ENERGY  
RESOURCES CORP**

**DEAD RIVER COMPANY**

**GUILFORD TRANSPORTATION  
INDUSTRIES, INC**

represented by **MARY F. KELLOGG**  
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**NORTH AMERICAN UTILITY  
CONSTRUCTION CORP**

**NORTHWESTERN GROWTH  
CORPORATION**

**S E MACMILLAN COMPANY  
INC**

**UGI UTILITIES INC**

**UNITED STATES ARMY CORPS  
OF ENGINEERS**

**ThirdParty Plaintiff**

-----

**CITIZENS COMMUNICATIONS  
COMPANY**

V.

**ThirdParty Defendant**

-----

**MAINE CENTRAL RAILROAD  
COMPANY**

represented by **MARY F. KELLOGG**  
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